

# Iowa Department of Natural Resources Environmental Protection Commission

ITEM

DECISION

TOPIC

**Inter-governmental Agreement (28E) between the Iowa Department of Natural Resources and the Iowa Comprehensive Petroleum Underground Storage Tank Fund Board to Provide Funding for Assessment and Corrective Action at LUST Sites where a No Further Action Certificate has been Issued.**

**ATTACHMENT: 28E AGREEMENT for Funding the Reopening of LUST Sites for which NFA Certificates have been issued.**

Commission approval is requested for the Department of Natural Resources (DNR) to enter into an agreement with the Iowa Comprehensive Petroleum Underground Storage Tank Fund Board (UST Fund), whereby the UST Fund finances assessment and corrective action of newly identified public health and safety risks associated with historical LUST sites that have been previously 'closed'.

## **Background:**

Iowa Code section 455G.9 specifies conditions on uses for the state's UST remedial benefits account. The authority to enter into this agreement is provided under 455G.9(1)(k) (2007) which states "Pursuant to an agreement between the board and the department of natural resources, assessment and corrective action arising out of releases at sites for which a no further action certificate has been issued pursuant to section 455B.474, when the department determines that an unreasonable risk to public health and safety may still exist. At a minimum, the agreement shall address eligible costs, contracting for services, and conditions under which sites may be reevaluated." The DNR and UST Fund have negotiated terms and conditions regarding eligible sites, scope of work, financing, and termination criteria as indicated in the attached agreement.

The impetus behind the statute change in 2007 was to provide a means to fund necessary assessment and corrective actions to alleviate newly discovered public health and safety risks that are tied to 'old' petroleum releases – specifically, LUST sites which had already been assessed, closed and issued a No Further Action certification. In part, the statute change was made with the intension of strengthening the finality of an NFA certificate for LUST site responsible parties. It was supported by the petroleum marketing industry because the belief was this agreement would take management and funding obligations for these new risk situations out of the hands of the LUST site responsible parties (RP), that it would decrease their liability for old releases (which had been properly assessed and closed per regulations in place at the time), and improve value and marketability of their properties. DNR also supported the statute change because it creates an expeditious means for funding corrective action for documented public health risks (i.e., emergency conditions) regardless of the financial capability /status of the LUST site RP, as well as provides a mechanism for addressing and preventing new potential risks

arising out of newly discovered conditions (for example, finding a new ‘pocket’ of contamination or identifying a previously unreported receptor (well, basement)).

### **The Process:**

The DNR has developed guidelines for how to determine when reopening a closed LUST is warranted. Upon examination of the newly discovered conditions, readily available site information, characteristics of the former plume and investigation, DNR staff will make a determination of whether an unreasonable risk is present or likely to be present such that funding is needed for further assessment and/or corrective action. The DNR and UST Fund will jointly work with groundwater professional to address the risk conditions.

Sections V of the agreement identifies which ‘closed’ LUST site are eligible for assessment and corrective action funding; not all sites will be eligible for funding (e.g., new releases occurring after the NFA certificate was issued). Further, the DNR can make a case to the UST Fund Board and request approval for those sites that fall outside of the eligibility criteria. Should the DNR determine an unreasonable risk is present, but the UST Fund Board determines the site does not qualify for funding, DNR has authority to require the LUST RP to conduct the necessary work [455B.474(1)(h)(3)]. Section VI specifies the funding limitations and eligible and ineligible assessment and corrective action costs.

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